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18 November 1947

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*Legal Decision
(Memo 2 Law)*

MEMORANDUM FOR THE GENERAL COUNSEL

Subject: Disposition of Captured Japanese Documents.

The Joint Chiefs of Staff paper 950/15, dated 13 August 1946, subject: "Distribution of Records of Combined and Joint Operations," as approved 28 August 1946, deals with the problem of determining the groups of records which do not properly belong in the archives of the War or Navy Departments, and recommends to the Joint Chiefs of Staff, on the basis of major interest, the department which should be designated custodian thereof.

JCS 950/15 provides for the disposition of captured German and Japanese documents as follows:

"a. Captured German records presently held by either the War or Navy Department will be retained in the files of the Department now having custody of them, and any additional captured German records which may come into the custody of the United States will be filed in the archives of the Department which has a major interest in the records involved.

"b. Captured Japanese records will be filed in the archives of the Department having a major interest in the records involved. However, these records will not be filed in the archives until after they have been exploited for intelligence purposes."

(Note should be made of the distinction made as to their handling between German and Japanese documents.)

In connection with the disposition of captured Japanese records, the Director of Intelligence, War Department Central Staff, and the Chief of Naval Intelligence determined that the Central Intelligence Group was best equipped to handle the records involved. In a memorandum, the Director of Intelligence, W.D.G.S., and the Chief of Naval Intelligence requested that the Director of Central Intelligence

"In accordance with paragraph 3. c. of the President's letter of 22 January 1946, perform for the benefit of all the intelligence agencies the processing, dissemination and handling of all captured Japanese documents, and that he furnish a final repository for same."

In a memorandum dated 2 November 1946, the Director of Central Intelligence accepted

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the principal proposal for the transfer of the Washington Document Center, in order to perform for the benefit of all the intelligence agencies the processing, dissemination and housing of all captured Japanese documents"

The approval of the War and Navy Departments of this action was implied in letters from the Secretaries of War and the Navy. Under date of 26 November 1946, Mr. Forrestal, as Secretary of the Navy, addressed a memorandum to the Director of Central Intelligence, making naval personnel available "to permit continuation of the Washington Document Center under the operational control of the Central Intelligence Group."

Similarly, on 14 November 1946, Mr. Patterson, the Secretary of War, in a memorandum to the Director of Central Intelligence concerning the transfer of the Washington Document Center to the control of Central Intelligence Group, in effect, gave approval to the transfer of the Document Center to the Central Intelligence Group by approving certain personnel transfers to implement handling by CIG.

In view of the above commitments, it is apparent that full operational control of the Washington Document Center, and of the Japanese documents contained therein, has been transferred to the Central Intelligence Agency for the purpose of processing, disseminating and housing all captured Japanese documents and furnishing a final repository for same. In furnishing such a final repository, it is felt that the Central Intelligence Agency can select the appropriate repository, and that it need not be within the confines of the Central Intelligence Agency itself. It can properly be the National Archives, the Library of Congress, or such other department or agency as appropriate. This would also appear to be within the intent of JCS 150/15 which provides that these records will be "filed in the archives of the department having a major interest in the records involved." Present procedures also come within the intent of paragraph f. of JCS 150/15 which further provides that the Japanese records will not be filed in the archives until exploitation for intelligence purposes has been completed.

In view of the above, it is our opinion that, title to the documents having passed to the Central Intelligence Agency, it is within the jurisdiction of this Agency to make the final determination, in accordance with appropriate provisions of law, as to the ultimate disposition of these captured Japanese documents, and that this is in accordance with Joint Chiefs of Staff's intent. Certain of these Japanese documents will, in all probability, be deposited in the National Archives as a permanent transfer. The intention of forwarding these documents to National Archives should be expressed in a letter from the Director of Central Intelligence to the Archivist of the United States, Honorable Solon J. Buck. It is the request of the Office of the Archivist that this letter, a form for which has been supplied to CIA, should include a specific statement transferring

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title to such documents as are transferred to the National Archives.

In a Memorandum to the General Counsel, dated 19 August 1947, Subject: Captured Documents, disposition of, the Assistant Director for Collection and Dissemination propounded certain questions which he desired to be answered for his guidance in this matter. These questions, and the answers thereto, are considered herewith.

1. Are captured documents and other material of a documentary nature considered as government records within the meaning of the Act governing the destruction of government records?

The law regarding disposition of records defines records (44 USC 335) to include

"... all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency . . . because of the informational value of data contained therein."

This indicates that captured documents would be considered as records received by an agency of the United States Government "in connection with the transaction of public business" which might be appropriate for preservation "because of the informational value of data contained therein." This opinion has been concurred in by the Office of Archivist.

However, note should be taken of the additional clause in the section of the law cited above, which states that:

"Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference . . . are not included within the definition of the word 'records'"

Care should be exercised in that the material transferred to Archives should be record material - basically government records. It is at that point that the line between Archives and the Library of Congress appears to be drawn. If the material consists of books, periodicals, or general printed material, it does not always fall within the legal definition of "records" and, therefore, is not within the provisions of the Federal Disposal Act; rather this material would be considered "library and museum material" and would be transferred to the Library of Congress. However, in the last analysis, it is not a question of physical form or characteristics but rather whether it is a record in the material sense. For

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example, certain rules and regulations of a Japanese Ministry may be printed up in book form, but these would be considered records pertaining to the Ministry and, therefore, would be transferred to the Archives. Similarly, published maps of the Japanese War Ministry are considered to be pertinent to the War Ministry Records, and, therefore, would be transferred to the Archives.

2. Should any distinction be made in the disposition of official records of the enemy government, smaller political sub-division records, business records, or private records of individuals, particularly personal records of enemy military personnel?

The answer to this question is in the negative. The statute covering records, (cited in the answer to question 1, above), speaks of records "regardless of physical form or characteristics . . . received by any agency of the United States Government in pursuance of Federal law or in connection with the transaction of public business . . ." Certainly the prosecution of the war was "transaction of public business."

While it is noted that some of these records are of private individuals or business concerns, it is the feeling of the office of the Archivist that no attempt should be made to distinguish between them and Japanese Governmental records. It is felt that no serious attempt to break them down should be made, and that the majority of them should be considered as Governmental records, as they are United States records by capture. (This does not change the thought expressed in the answer to question 1, as to the type of material to be forwarded to the Library of Congress, but merely distinguishes between governmental records on the one hand, and private and business records of the Japanese on the other.)

It should be noted that the records, to fall within the purview of the statute, must be captured or seized officially by our armed forces, and should not consist of personal loot.

Care should be taken, however, in connection with their destruction, that documents which are of value to agencies other than CIA should not be destroyed. They should be disposed of in accordance with principles discussed below. Special care should be taken, in scheduling documents for final disposition or destruction, that no record should be destroyed which would be of future value to the United States either as a defense against possible future suits for claims against this government, or material which might be figured in some final reparations bill. Particular care should be exercised in connection with captured patents and similar documents. It is for this reason, that the office of the Archivist feels that CIA should not attempt to distinguish between military, governmental and business records, but rather should keep them all together in Archives when intelligence exploitation has been completed.

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3. The authority of CIA to destroy such captured documents as are deemed to be of no intelligence value.

CIA has no authority to destroy captured documents except under the terms of the Federal Disposal Act. It is necessary, when CIA desires to destroy documents, to request permission of the National Archives, which in turn, requests permission of Congress. Congress then informs the Archives of its decision. The request from CIA to the Archives is set forth in schedules for destruction of documents and is a fixed form. These requests -- and the whole problem of CIA relations with the Archivist -- are handled by the Central Records Division, Services Branch, under the Executive for Administration and Management. When the Foreign Documents Branch has documents for disposal which they deem of no intelligence value, and of no value for inter-agency transfer, they should make arrangements for their scheduling. It should be noted that once it has been determined that a certain class of documents may be destroyed, recurring permission need not be obtained from the Archivist for the destruction of this class of document.

4. The authority or responsibility of CIA to transfer to other agencies of the Federal Government such of subject documents as are no longer desired to be retained by this agency.

This authority for inter-agency transfer is provided in Executive Order 1704, dated 25 September 1946. This order provides that:

"No records shall be transferred by one agency to the custody of another agency without the approval of the Director of the Bureau of the Budget except for their retirement to the National Archives, as a temporary loan for official use, or as may be otherwise required by statute or Executive order."

The regulations governing inter-agency transfer through the Bureau of the Budget should be ascertained and placed in operation. Where it has been established that certain records should be the subject of inter-agency transfer, CIA should request the Director of the Bureau of the Budget for a recurring and continuing right to transfer this particular type of record to the specific agency.

5. The authority of CIA to release or distribute to private interests such of subject documents (or copies thereof) which are no longer desired for retention by CIA.


Such documents as CIA wishes to dispose of in this manner must be scheduled for disposal to the Archivist who in turn will request Congress for permission to dispose of them. Once permission for their destruction has been secured, a further request

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should then be addressed to the Archivist requesting permission
for special disposal of the documents by dissemination to
private interests.

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Assistant General Counsel

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